

Alabama Rules of Criminal Procedure

Rule 7. Release.

Rule 7.1. Definitions and requirements.

(a) **PERSONAL RECOGNIZANCE.** A release on defendant's "personal recognizance" means release without any condition of an undertaking relating to, or a deposit of, security.

(b) **APPEARANCE BOND.** An "appearance bond" is an undertaking to pay to the clerk of the circuit, district, or municipal court, for the use of the State of Alabama or the municipality, a specified sum of money upon the failure of a person released to comply with its conditions.

(c) **SECURED APPEARANCE BOND.** A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.

(d) **SECURITY.** "Security" is cash, certified funds, or a surety's undertaking, deposited with the clerk to secure an appearance bond.

(e) **SURETY.** A "surety" is someone (other than the person released) who executes an appearance bond and binds himself to pay its amount, if the person released fails to comply with its conditions. A surety, except one qualified as a professional bondsman, professional surety company, or professional bail company, shall file with an appearance bond an affidavit or certification, under penalties of perjury,

(1) Stating that the surety is not an attorney, judicial official, or person authorized to take bail (or if the surety is an attorney, judicial official, or person authorized to take bail, then the affidavit or certification shall state the surety's relationship to the person released). An attorney, judicial official, or person authorized to accept an appearance bond shall not be precluded from being a surety for a member of his or her immediate family. For purposes of this rule, the term "immediate family" shall be limited to include only a spouse; a sibling; a spouse's sibling; a lineal ancestor or descendant; a lineal ancestor or descendant of a spouse, a sibling, or a spouse's sibling; or a minor or incompetent person dependent upon the surety for more than one-half (1/2) of his or her support;

(2) Stating that the surety owns property in this state, which property, when aggregated with that of other sureties, is worth the amount of the appearance bond (provided, that the property must be exclusive of property exempt from execution and its value equaling the amount of the appearance bond must be above and over all liabilities, including the amount of all other

outstanding appearance bonds entered into by the surety) and specifying that property and the exemptions and liabilities thereon; and

(3) Specifying the number and amount of other outstanding appearance bonds entered into by the surety.

No surety may execute an appearance bond or become surety for more than four (4) persons in any twelve- (12-) month period (other than immediate family members) unless such surety qualifies and meets the requirements of a professional surety company or professional bail company.

(f) PROFESSIONAL SURETY COMPANY. A “professional surety company” is an insurance company, a domestic or foreign corporation, or an association engaged in the business of insurance, or a surety, to which or to whom has been issued a “Certificate of Authority” or “Certificate of Compliance” by the Alabama Department of Insurance to execute appearance bonds or to transact a surety business in the State of Alabama.

(g) PROFESSIONAL BAIL COMPANY. A “professional bail company” is a person, an individual proprietor, a partnership, a corporation, or any other entity, other than a professional surety company, that shall furnish bail or become surety for a person on an appearance bond for a valuable consideration.

(h) PROFESSIONAL BONDSMAN. A “professional bondsman” is any individual person or agent who is employed by a professional surety company or professional bail company to solicit and execute appearance bonds or actively seek bail bond business for or in behalf of a professional surety company or a professional bail company.

(i) No professional surety company or professional bail company shall execute or become surety on any appearance bond in this State, unless it has an order granting authorization to become professional surety on any such bail issued annually by the presiding circuit judge of the county in which such company desires to execute such bail or appearance bonds. Prior to the judge’s issuance of such an order, professional surety companies and bail companies must submit annually to the presiding circuit judge the following:

If a professional surety company,

(1) An original or certified copy of a “Certificate of Authority” or “Certificate of Compliance” from the Department of Insurance of the State of Alabama reflecting that the company is qualified to write either a surety or a bail line of insurance and that the company is in good standing;

(2) An original “Qualifying Power of Attorney” issued by the professional surety company, specifying any applicable limitations and the agents that are

authorized to execute and bind the company to a bail undertaking. The Qualifying Power of Attorney cannot name any company, corporation, or other entity as an agent except a person as defined in paragraph (h), and that person must be a licensed agent of the company with the Department of Insurance of the State of Alabama;

(3) A copy or copies of the license issued by the Department of Insurance of the State of Alabama of each agent who is named in or appointed by the Qualifying Power of Attorney in (2) above or a letter or other documentation from the Department of Insurance indicating that such appointed agents are temporarily licensed as agents of the professional surety company for those lines of insurance; and

(4) An affidavit or certification in writing, under oath, executed by a licensed agent of the professional surety company or a licensed agent of the professional surety company who is the manager, owner or president of a corporation, company, partnership, or other entity that represents the professional surety company, filed with the clerk of the circuit court of each county in which the professional surety company shall execute or become surety on appearance bonds, stating the following:

(a) That all appearance bonds shall be executed in the name of the professional surety company as surety by the agents listed or appointed in the Qualifying Power of Attorney presented to the court or any other Qualifying Powers of Attorney filed with the circuit clerk of the county.

(b) That all agents listed or appointed in the Qualifying Powers of Attorney will be licensed by the Department of Insurance, prior to such appointments.

(c) That any agency, company, corporation, or other entity that represents the professional surety company in the county, has no owners or other persons having a direct or indirect financial interest in such agency, company, corporation, or other entity, that have been convicted of a felony or a crime involving moral turpitude. If any persons, having a direct or indirect financial interest in such agency, company, corporation, or other entity, have been convicted of a felony or a crime involving moral turpitude, then the affidavit or certification shall certify that there has been such a conviction, providing the name of the person convicted, and shall certify that the person convicted has been pardoned or has had a restoration of civil rights;

(d) That the professional surety company has no knowledge of forfeitures that have been final for more than thirty (30) days that have not been paid arising out of surety undertakings, and as to which the

professional surety company has no petitions, motions, or other litigation matters pending;

(e) That no agents of the professional surety company who have the authority to execute appearance bonds in its behalf or any person having a financial interest, direct or indirect, in the ownership or management of any agency, company, corporation, or other entity that represents the professional surety company in the execution of appearance bonds, is an attorney, a judicial official, a person authorized to accept an appearance bond, or an agent of an attorney, judicial official, or person authorized to accept an appearance bond;

(f) The names and addresses of all persons, officers, employees, and agents of the agency, company, corporation, or other entity that represents the professional surety company becoming surety on appearance bonds who have a direct or indirect financial interest in the agency, company, corporation, or other entity representing the professional surety company and the nature and extent of each interest; and

(g) That those persons stated in (f) have not, within a period of two (2) years, violated any provisions of these rules or any court order pertaining to these rules.

If a professional bail company,

(1) An original corporate surety bond or escrow agreement, filed and approved by the presiding circuit judge of the county in which the professional bail company shall execute or become surety on appearance bonds, in the amount of \$25,000, guaranteeing the payment of all sums of money that may become due by virtue of any judgment absolute that may be rendered against said professional bail company on a forfeiture entered by any court in the county. Corporate surety bonds shall be executed only by a surety company authorized to do business in the State of Alabama and qualified to write such bonds by the Insurance Department of the State of Alabama. Such corporate surety bonds shall provide that it may be canceled as to any future liability by the corporate surety company's or the professional bail company's giving thirty- (30-) days prior written notice of such cancellation to the clerk of circuit court in which the bond or instrument was filed. A bank in the State of Alabama must be a party to all escrow agreements, and those agreements shall provide that the agreement may be canceled as to any future liability only by the professional bail company's and bank's giving thirty- (30) days prior written notice of such cancellation to the clerk of circuit court in which the escrow agreement or instrument is filed;

(2) An original "Qualifying Power of Attorney," letter, or other document issued by the professional bail company specifying any applicable limitations and

specifying the agents who are authorized to execute and bind the professional bail company to a bail undertaking or to appearance bonds. The Qualifying Power of Attorney, letter, or other document may name persons as agents, only; and

(3) An original affidavit or certificate in writing, under oath, executed by an owner or officer of a professional bail company, to the clerk of the circuit court of the county in which the professional bail company shall execute or become surety on appearance bonds, which contains the following:

(a) That all appearance bonds shall be executed in the name of the professional bail company as surety by the agents listed or appointed in the Qualifying Power of Attorney, letter, or other document presented to the court or any other so named in any future Qualifying Powers of Attorney, letters, or documents filed with the circuit clerk of said county.

(b) That the professional bail company is qualified to do business in this state and its resident address;

(c) That the professional bail company has sufficient financial net worth to satisfy its obligations as a surety;

(d) That no person having a direct or indirect financial interest in the professional bail company has been convicted of a felony or a crime involving moral turpitude, except that if any person having a direct or indirect financial interest in the bonding business has been convicted of a felony or a crime involving moral turpitude, then the person making the certification shall certify that there has been such a conviction, providing the name of the person convicted, and shall certify that the person convicted has been pardoned or has had a restoration of civil rights;

(e) That the professional bail company has no knowledge of any forfeiture that has been made final for more than thirty (30) days that has not been paid arising out of surety undertakings and as to which the professional bail company has no petitions, motions, or other litigation matters pending;

(f) That there are no persons, including employees, agents, or persons with a financial interest in the professional bail company, who, within a period of two (2) years, violated any provisions of these rules or any court order pertaining to these rules;

(g) That no employee, agent, or any other person having a direct or indirect financial interest in the professional bail company is an attorney, a judicial official, a person authorized to accept an appearance bond, or an

agent of an attorney, judicial official, or person authorized to accept an appearance bond; and

(h) The names and addresses of all officers, employees, and agents of the professional bail company who have a direct or indirect financial interest in the professional bail company and the nature and extent of each interest.

(j) All professional surety companies and all professional bail companies shall file all original documents required to be filed pursuant to Rule 7.1 with the clerk of the circuit court of the county where such companies desire and intend to become surety on appearance bonds. Such documents are public records.

(k) All corporate surety bonds and escrow agreements as set out in Rule 7.1 shall be filed with the circuit clerk of the county where the professional bail company desires and intends to become surety on appearance bonds, and such bonds and escrow agreements must be approved by the presiding circuit judge as being sufficient. Any surety bonds, escrow agreements, and other documents pertaining or attached thereto shall be originals only. After the documents are approved, the circuit clerk shall take custody of the originals and file them for safekeeping.

(l) All corporate surety bonds and escrow agreements shall contain essentially the language set out in the forms provided in the appendix to this rule. Corporate surety bonds presented shall have an original Qualifying Power of Attorney from the company attached thereto and a Certificate of Authority or Certificate of Compliance from the Department of Insurance of the State of Alabama reflecting that the corporate surety company is qualified to execute surety bonds in Alabama.

(m) All corporate surety bonds and all escrow agreements that have been filed and approved by the probate judge of any county of the State of Alabama, for the purpose of qualifying bail companies, prior to the adoption of Rule 7, as amended, shall be forwarded to the circuit clerk of the same county in which such bond or escrow agreement was filed. The circuit clerk shall file and maintain them for safekeeping. Any such corporate surety bonds or escrow agreements not in conformity with these rules but that have been approved by the presiding circuit judge of such county prior to December 1, 1991, shall not affect the professional bail company's right to execute appearance bonds, but those professional bail companies shall be notified by the circuit clerk by certified mail, return receipt requested, that the documents are not in conformity and shall have sixty (60) days from the date of receiving notice to comply. If the professional bail companies have not complied within the sixty (60) days provided, the clerk shall notify the presiding judge of the noncompliance and the presiding circuit judge shall issue an order of revocation of its order of authorization. All professional surety companies that are not in compliance with these rules but that have been

issued an order of authorization prior to December 1, 1991, shall likewise be notified by the circuit clerk and shall be allowed sixty (60) days to conform and comply, failing which their authority shall be revoked.

(n) The presiding judge of the circuit court at any time may, and on verified motion of the prosecutor shall, subpoena the representatives of the professional surety company or professional bail company or other persons for examination under oath concerning matters relating to any affidavit or certificate filed, outstanding forfeitures, and all relevant books, tax returns, and financial data. Authority to act as a professional surety company or a professional bail company may be revoked or withheld by the court for violation of any provision of this rule, for failure to submit subpoenaed documents, for failure to answer truthfully all relevant questions asked by the court, or in the event the professional surety company or professional bail company has outstanding and unpaid final forfeiture(s). As used herein, outstanding unpaid final forfeitures shall be those in which a final order or forfeiture has been entered by the court and thirty (30) days have elapsed since the date of the judgment; provided, however, that those companies have no petitions, appeals, or other matters of litigation pending of which the court has knowledge.

[Amended eff. 3-1-92.]

**Committee Comments as Amended to Conform to Rule as Amended
Effective March 3, 1992**

Rule 7.1 provides definitions for use within these rules and explicitly defines “professional bondsman” and imposes restrictions and requirements on the business of making bonds for others for a fee. It is specifically provided that any surety shall be liable for the full amount of any bond signed, regardless of other requirements that must be met pursuant to this rule, e.g., deposit of \$25,000 corporate surety bond. Attorneys, as officers of the court, judicial officials, and officers authorized to accept appearance bonds, should not be making bonds.

See Ala.Code 1975, § 15-13-22, for general qualifications of bondsmen and Ala.Code 1975, § 15-13-24, for restrictions against judicial and ministerial officers of the state becoming sureties or signing bonds.

Section (h) defines “professional bondsman” as one who is employed by a professional surety company or professional bail company to solicit or execute appearance bonds or to actively seek bail bonding business. The court supervises professional bondsmen by requiring annual certification under oath of qualifying information, including that no person having a financial interest in the business has been disqualified for any reason from being in the bonding business.

Rule 7.1(i) requires certification that the bondsman is not acting for an attorney or other disqualified person. The rule would not necessarily preclude the spouse or a close relative of an attorney from acting as a bondsman, but it would cast a strong burden of showing that there was no financial benefit, direct or indirect, accruing to the attorney. The implication would be otherwise, and the better practice would be to avoid the appearance of impropriety. On one hand, the rule keeps the attorney from being in a potential conflict of interest with his own client (as, for example, not arguing forcefully for release on recognizance in hopes of making a bond fee). On the other hand, it removes the attorney from the position of feeling obliged to make bond for a client who has paid the attorney a good fee for representation. The language giving the court power to inquire into the bonding business is within the inherent power of the court anyway, but the rule makes it explicit. The district attorney is given power to initiate an inquiry, which he or she could do anyway through a grand jury investigation, of suspected perjury in the certificate. Failure to furnish records or to respond truthfully is sufficient grounds for the court to withdraw or to withhold authority to make bonds.

Committee Comment Added August 1, 1997

Rule 7.1 supersedes all local acts, orders, and rules that authorize the approval of bonds in an amount other than \$25,000 per county. It also supersedes local procedures and prerequisites for the approval of bonds that conflict with Rule 7.1.